INDIANA JUDICIAL CENTER

CASE CLIPS

Selected decisions of the Indiana appellate courts abstracted for judges by the Indiana Judicial Center.

VOL. XXVIII, NO. 7 **March 6, 2001**

CRIMINAL LAW ISSUES

ILLINOIS v. McARTHUR, No. 99-1132, ___ U.S. ____, ___ S.Ct. ____, __ U.S.L.W. ____ (Feb. 20, 2001).

JUSTICE BREYER delivered the opinion of the Court.

Police officers, with probable cause to believe that a man had hidden marijuana in his home, prevented that man from entering the home for about two hours while they obtained a search warrant. We must decide whether those officers violated the Fourth Amendment. We conclude that the officers acted reasonably. They did not violate the Amendment's requirements. And we reverse an Illinois court's holding to the contrary.

. . . .

In the circumstances of the case before us, we cannot say that the warrantless seizure was per se unreasonable. It involves a plausible claim of specially pressing or urgent law enforcement need, i.e., "exigent circumstances." [Citations omitted.] Moreover, the restraint at issue was tailored to that need, being limited in time and scope, [citation omitted] and avoiding significant intrusion into the home itself,[citation omitted]. Consequently, rather than employing a per se rule of unreasonableness, we balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable.

. . . .

We conclude that the restriction at issue was reasonable, and hence lawful, in light of the following circumstances, which we consider in combination. First, the police had probable cause to believe that McArthur's trailer home contained evidence of a crime and contraband, namely, unlawful drugs. The police had had an opportunity to speak with Tera

McArthur and make at least a very rough assessment of her reliability. They knew she had had a firsthand opportunity to observe her husband's behavior, in particular with respect to the drugs at issue. And they thought, with good reason, that her report to them reflected that opportunity. Cf. Massachusetts v. Upton, 466 U.S. 727, 732-734, 104 S.Ct. 2085, 80 L.Ed.2d 721 (1984) (per curiam) (upholding search warrant issued in similar circumstances).

Second, the police had good reason to fear that, unless restrained, McArthur would destroy the drugs before they could return with a warrant. They reasonably might have thought that McArthur realized that his wife knew about his marijuana stash; observed that she was angry or frightened enough to ask the police to accompany her; saw that after leaving the trailer she had spoken with the police; and noticed that she had walked off with one policeman while leaving the other outside to observe the trailer. They reasonably could

have concluded that McArthur, consequently suspecting an imminent search, would, if given the chance, get rid of the drugs fast

Third, the police made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy. They neither searched the trailer nor arrested McArthur before obtaining a warrant. Rather, they imposed a significantly less restrictive restraint, preventing McArthur only from entering the trailer unaccompanied. They left his home and his belongings intact--until a neutral Magistrate, finding probable cause, issued a warrant.

Fourth, the police imposed the restraint for a limited period of time, namely, two hours. Cf. Terry v. Ohio, supra, at 28, 88 S.Ct. 1868 (manner in which police act is "vital . . . part of . . . inquiry"). As far as the record reveals, this time period was no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant. Compare United States v. Place, supra, at 709-710, 103 S.Ct. 2637 (holding 90-minute detention of luggage unreasonable based on nature of interference with person's travels and lack of diligence of police), with United States v. Van Leeuwen, 397 U.S. 249, 253, 90 S.Ct. 1029, 25 L.Ed.2d 282 (1970) (holding 29-hour detention of mailed package reasonable given unavoidable delay in obtaining warrant and minimal nature of intrusion). Given the nature of the intrusion and the law enforcement interest at stake, this brief seizure of the premises was permissible.

. . . .

Rehnquist, C. J., and O'Connor, Scalia, Kennedy, Souter, Thomas, and Ginsburg, JJ., joined.
Souter, J., filed a separate written opinion in which he concurred.
Stevens, J., filed a separate written opinion in which he dissented.

MICKENS v. STATE, No. 49S00-0005-CR-325, ___ N.E.2d ___ (Ind. Feb. 27, 2001).
SHEPARD, C. J.

To prove the murder, the State demonstrated that Mickens caused Whitlow's death by shooting him two times with a handgun. It also showed that Mickens carried the gun as he approached Whitlow and Lewis. [Citation to Record omitted.] Once the State proved that Mickens carried a handgun, the burden shifted to Mickens to provide proof that he possessed a valid license. Washington v. State, 517 N.E.2d 77 (Ind. 1987). See also Ind. Code Ann. § 35-47-2-1 (West 1998). Mickens did not.

This claim resembles the one addressed in Ho v. State, 725 N.E.2d 988 (Ind. Ct. App. 2000). There, the Court of Appeals confronted a double jeopardy claim arising from a defendant's convictions for robbery and carrying a handgun without a license. Id. at 992. Like Mickens, Ho did not present evidence that he had a license for the handgun that he used to commit robbery. The court concluded that "distinct evidentiary facts were used to prove that Ho committed robbery while armed with a handgun, while a lack of evidentiary

facts was used to prove that Ho did not have a license to carry that handgun." Ho, 725 N.E.2d at 993. Consequently, the court held that Ho unsuccessfully demonstrated "a reasonable possibility that the same evidentiary facts may have been used to establish the essential elements of each challenged offense." Id.

This seems about right. Carrying the gun along the street was one crime and using it was another. The Richardson actual evidence test is not met, and we reject Mickens' double jeopardy claim.

. . . .

BOEHM, DICKSON, RUCKER, and SULLIVAN, JJ., concurred.

ANTRIM v. STATE, No. 61A01-0010-CR-339, ___ N.E.2d ___ (Ind. Ct. App. Feb. 26, 2001).
RILEY, J.

Antrim claims that his imprisonment will cause an undue hardship to his family. Ind. Code § 35-38-1-7.1(c) (10) provides that the sentencing court may consider as a mitigating factor whether the imprisonment of the defendant will result in an undue hardship to the defendant's dependents. Antrim testified that his wife has cerebral palsy and that she is disabled. He further testified that he provides support for his two teenage children at home, and that he also pays support for a third child. He testified that he has two jobs, one of which he had for ten years, and the other position he had for four months prior to the sentencing hearing. The State did not challenge this evidence. Thus, since the Record clearly supports Antrim's proffered mitigating factor of undue hardship to his family, and we find this significant, we conclude that the trial court failed to properly consider it.

Antrim also argues that the trial court failed to consider as mitigating circumstances his cooperation with authorities, his guilty plea, and his willingness to accept responsibility for his actions. Our supreme court has noted that the defendant's guilty plea may be a significant mitigating factor as it saves court time and judicial resources. *Widener*, 659 N.E.2d at 534. The *Widener* court also stated that the defendant's guilty plea shows a willingness to accept responsibility for his actions. *Id.* Here, Antrim did plead guilty, thus, the trial court should have properly considered this fact as a mitigating circumstance.

. . . .

Therefore, we conclude that the trial court failed to properly consider, as significant mitigating factors, the undue hardship Antrim's incarceration may have on his family, and Antrim's guilty plea.

. . . .

Consequently, we remand this case to the trial court for a new sentencing hearing in which the trial court shall consider these mitigating factors, the undue hardship Antrim's incarceration may have on his family, and Antrim's guilty plea, while weighing the significant aggravating and mitigating factors to determine Antrim's sentence.

Remanded.

DARDEN and ROBB, JJ., concurred.

WILLIAMS v. STATE, No. 49A04-0009-CR-371, ___ N.E.2d ___ (Ind. Ct. App. Feb. 26, 2001). RILEY, J.

On May 12, 2000, at approximately 8:50 p.m., Officer Jack Tyndall of the Indianapolis Police Department observed Williams talking to a female, later identified as Charlene Smith (Smith), on the corner of East Ohio Street and North Randolph Avenue in Indianapolis, Indiana. Officer Tyndall observed Williams and Smith making some type of hand to hand exchange, but he did not see what was being exchanged. After this occurred, Smith looked over her shoulder, saw Officer Tyndall, and she and Williams then walked away in separate directions.

In response, Officer Tyndall quickly pulled his vehicle between Williams and Smith in order to stop them both. . . .

. . . .

[T]he State relies on our decision in *Shinault v. State*, 668 N.E.2d 274, 277 (Ind. Ct. App. 1996), in support of its position that Officer Tyndall had a reasonable suspicion to stop Williams. In *Shinault*, we affirmed the trial court's denial of Shinault's motion to suppress evidence obtained during an investigatory stop. *Id.* We concluded that there was reasonable suspicion to stop Shinault after the police observed him involved in some type of transaction with another person, who was known to be involved in illegal activity, in a high narcotics traffic area, and where the two walked away in different directions after Shinault saw the patrol car. *Id.* The *Shinault* decision however is distinguishable because unlike *Shinault,* here there was no evidence that Williams was in a high crime area or that Office Tyndall knew him or Smith to be involved in criminal activity.

Alone, Williams' act of walking away is an insufficient basis for an investigatory stop. *See Tumblin*, 664 N.E.2d at 784. Furthermore, the evidence concerning the "exchange" between Williams and Smith is equally insufficient to support the stop because the officer had no idea what Williams and Smith exchanged. Officer Tyndall's suspicion was based merely on a hunch that Smith and Williams were involved in criminal activity and this is not a sufficient basis for an investigatory stop. *See Webb*, 714 N.E.2d at 788.

. . . .

DARDEN and ROBB, JJ., concurred.

CIVIL LAW ISSUES

CARTER v. JOHNSON, No. 34A02-0010-CV-681, ___ N.E.2d ___ (Ind. Ct. App. Feb. 23, 2001).

DARDEN, J.

Whether the trial court has authority to incarcerate an individual for indirect contempt upon the individual's alleged violation of a temporary protective order, absent compliance with the provisions of the indirect contempt statute.

. . . Carter was served with the temporary protective order on October 11.

On October 18, Johnson again appeared before the trial court *ex parte*. She testified that since the order was issued, Carter had violated it repeatedly. . . . The trial court advised Johnson that she could "file a police complaint with the Prosecutor" if she wanted "charges brought against him" for property damage and theft. [Citation to Record omitted.] However, the trial court also found "probable cause to believe" that Carter had violated the protective order, and ordered Carter's arrest. [Citation to Record omitted.] Carter was arrested and posted bond on October 19.

On October 20, Johnson appeared for a third *ex parte* hearing before the trial court. She testified that when Carter was released the day before, he had come to her house and "started just cussing" at her nine-year old son. [Citation to Record omitted.] The trial court found "probable cause to believe [Carter] committed indirect contempt of Court after being released from jail on October 19," and again ordered him arrested but this time "held without bond." [Citation to Record omitted.]

. . . .

[T]he trial court itself was without authority to charge Carter with the misdemeanor offense of invasion of privacy. Because there was no extant criminal charge based upon a sworn statement, there could be no warrant for an arrest justified thereby.

[W]e consider whether the arrest and incarceration might have been within the trial

court's contempt power. . . .

The record herein does not indicate that Carter ever appeared personally in the trial court or had committed any acts before being incarcerated of which the trial court had personal knowledge. Thus, it appears that he could not have committed an act of direct contempt of the court. However, according to Johnson, Carter did disobey the temporary protective order issued by the trial court. Therefore, Carter could have been found to have committed indirect contempt, defined by statute to include "willful disobedience" of a "lawfully issued" order of a trial court. Ind. Code § 34-47-3-1. Yet it appears undisputed that Carter received none of the due process protections that are part and parcel of the indirect contempt statutory scheme. [Citation omitted.] . . .

We agree with Carter that, having failed to comply with the due process requirements of the indirect contempt statute, the trial court was without authority to order him arrested and incarcerated. Consequently, we reverse the trial court's order incarcerating Carter.

RILEY and ROBB, JJ., concurred.

DUNSON v. DUNSON, No. 34A02-0006-CV-375, ___ N.E.2d ___ (Ind. Ct. App. Feb. 26, 2001).

BROOK, J.

Our analysis focuses on Indiana Code Section 31-16-6-6, which governs termination of child support due to the emancipation of the child:

> (a) The duty to support a child under this chapter ceases when the child becomes twenty-one (21) years of age unless *any* of the following conditions occurs:
>
> (1) The child is emancipated before becoming twenty-one (21) years of age. In this case the child support, except for the educational needs outlined in section 2(a)(1) of this chapter, terminates at the time of emancipation, although an order for educational needs may continue in effect until further order of the court.
>
> (2) The child is incapacitated. In this case the child support continues during the incapacity or until further order of the court.
>
> (3) The child:
>
> (A) is at least eighteen (18) years of age;
>
> (B) has not attended a secondary or postsecondary school for the prior four (4) months and is not enrolled in a secondary or postsecondary school; and
>
> (C) is or is capable of supporting himself or herself through employment.
>
> In this case the child support terminates upon the court's finding that the conditions prescribed in this subdivision exist. However, if the court finds that the conditions set forth in clauses (A) through (C) are met but that the child is only partially supporting or is capable of only partially supporting himself or herself, the court may order that support be modified instead of terminated.
>
> (b) For purposes of determining if a child is emancipated under subsection (a)(1), if the court finds that the child:
>
> (1) has joined the United States armed services;
>
> (2) has married; or
>
> (3) *is not under the care or control of*:
>
> (A) *either parent*; or
>
> (B) an individual or agency approved by the court;
>
> the court shall find the child emancipated and terminate the child support.
>
> **. . . .**

In 1964, before the enactment of this statute's precursor, [footnote omitted] our supreme court stated, "Emancipation frees a child from the care, *custody* and control of its parents, what constitutes emancipation of a minor child is a question of law, but whether there has been an emancipation is a question of fact." *Stitle v. Stitle*, 245 Ind. 168, 182, 197 N.E.2d 174, 182 (1964) (referring to 22 I.L.E. *Parent and Child* § 18) (emphasis added). . . .

. . . .

In *Young v. Young*, 654 N.E.2d 880 (Ind. Ct. App. 1995), *trans. denied*, our court stated, "According to I.C. § 31-1-11.5-12(e)(3)(A), emancipation occurs when the child *places himself* beyond the control, *custody*, and care of either parent. Our inquiry under that section is whether the child is in fact supporting herself without the assistance of her parents." *Id*. at 883 (citing *Taylor*) (emphases added). Thus, common-law emancipation principles seem to have crept unbidden into the statutory realm.[11]

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[11] *See, e.g., In re Marriage of Brown*, 597 N.E.2d 1297, 1300 (Ind. Ct. App. 1992) ("Rather, emancipation occurs when the child places herself beyond the control, custody and care of her parents.") (citing IND. CODE § 31-1-11.5-12(e) and *Taylor*); *Brown v. Brown*, 581 N.E.2d 1260, 1263 n.1 (Ind. Ct. App. 1991) ("'Emancipation' occurs when a minor child becomes free of the care, custody, and control of its parents while still a minor.") (citing *Stitle* and *Green*); *Kirchoff v. Kirchoff*, 619 N.E.2d 592, 596 n.3 (Ind. Ct. App. 1993) ("'Emancipation' occurs when a minor child is no longer in the care, custody, and control of either parent.") (citing *Brown*); *Quillen*, 659 N.E.2d at 576 ("To determine whether a child has placed herself beyond the control, custody and care of either parent, we consider whether the child is in fact supporting herself without the assistance of her parents.") (citing *Young*); *Lawson*, 695 N.E.2d at 156 ("Emancipation frees a child from the care, custody and control of its parents.") (citing *McKay*).

. . . .

Recognizing that past decisions have addressed the emancipation question in terms of a child placing himself beyond parental custody and his ability to support himself without parental assistance, we nevertheless conclude that section 31-16-6-6(b)(3)(A) unambiguously requires only that a child not be under the care or control of either parent to be found emancipated under Indiana law. Our conclusion does not affect the well-settled principle that "what constitutes emancipation of a minor child is a question of law, but whether there has been an emancipation is a question of fact." *Lawson* [*v. Lawson*], 695 N.E.2d [154] at 156 [(Ind. Ct. App. 1998)]. Nor should our conclusion be interpreted as permitting or even encouraging minor children to emancipate themselves "unilaterally" without recourse for custodial parents or compensation for third parties who assume responsibility for a child's care and control. A concerned parent may seek to have a minor child returned to her custody by initiating proceedings in juvenile court, and a third-party caregiver may be joined in a related custody action as a de facto custodian. *See* IND. CODE § 31-9-2-35.5 (defining de facto custodian); *see also id*. § 31-17-2-8.5(c) ("If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding."). Every parent has a duty to support his or her child, *Elbert v. Elbert*, 579 N.E.2d 102, 112 (Ind. Ct. App. 1991), and a minor child does not have unbridled power to emancipate himself and nullify a valid support order simply by leaving the care and control of his custodial parent, no matter how compelling or trivial the reason. [Footnote omitted.]

In the instant case, however, the trial court found that "[i]t was solely Chad's decision to move in with the Hembrees"; that Mother and Father had "acquiesced in [Chad's] living with his extended family" and had not "taken steps to exercise any parental rights to their agreed 'joint custody'"; and that Chad had been dependent on the Hembrees "for shelter, clothing, food, and parental supervision." Notwithstanding health insurance provided through Mother's employment [footnote omitted] and negligible clothing and financial contributions from both parents, the record clearly supports the trial court's conclusion that the Hembrees "solely provided for Chad's care, control and support and established the rules and regulations by which he was to abide." We therefore affirm the trial court's determination that Chad was emancipated under section 31-16-6-6(a)(1) and thus was not entitled to child support.

. . . .

BAKER and BARNES, JJ., concurred.

CASE CLIPS is published by the
Indiana Judicial Center
National City Center - South Tower, 115 West Washington Street, Suite 1075
Indianapolis, Indiana 46204-3417
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CASE CLIPS TRANSFER TABLE

March 6, 2001

This table lists recent grants of transfer by the Indiana Supreme Court for published decisions of the Court of Appeals. It includes Judicial Center summaries of the opinions of the Court of Appeals vacated by the transfers and of the Supreme Court's opinions on transfer.

A CASE CLIPS transfer information feature was suggested by the Justices of the Indiana Supreme Court in response to trial court requests for more accessible information about grants of transfer. The table is prepared with assistance from the Supreme Court Administrator's Office, which sends the Judicial Center a weekly list of transfer grants.

A grant of transfer vacates the opinion of the Court of Appeals: "[i]f transfer be granted, the judgment and opinion or memorandum decision of the Court of Appeals shall thereupon be vacated and held for naught, except as to any portion thereof which is expressly adopted and incorporated by reference by the Supreme Court, and further, except where summarily affirmed by the Supreme Court." Indiana Appellate Rule 11(B)(3).

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Owens Corning Fiberglass v. Cobb	714 N.E.2d 295 49A04-9801-CV-46	Defense should have received summary judgment as plaintiff showed only that he might have been exposed to its asbestos	01-19-00	
Krise v. State	718 N.E.2d 1136 16A05-9809-CR-460	(1) officers' entry into home to serve body attachment not illegal; (2) roommate gave voluntary consent to search; (3) scope of consent extended to defendant's purse located in common bathroom	2-17-00	
Elmer Buchta Trucking v. Stanley	713 N.E.2d 925 14A01-9805-CV-164	(1) Wrongful Death Act mandates recovery of the entire amount of a decedent's lost earnings without an offset for personal maintenance, and (2) defense not entitled to instruction that action not to punish defendant and that any award of damages could not include compensation for grief, sorrow, or wounded feelings	2-17-00	
Hancock v. State	720 N.E.2d 1241 34A02-9808-CR-657	Conviction for breath-alcohol formulation of I.C. 9-30-5-1, not challenged at trial but later held unenforceable in Court of Appeals' *Sales v. State*, was fundamental error [Note - *Sales* was vacated by transfer 1-18-00 and statute held enforceable in opinion at 723 N.E.2d 416]	2-22-00	
Rheem Mfg. v. Phelps Htg. & Air Cond.	714 N.E.2d 1218, 49A02-9807-CV-620	1) failure of essential purpose of contract's limited remedy does not, without more, invalidate a wholly distinct term excluding consequential damages; (2) genuine issues of material fact as to whether the cumulative effect of manufacturer's actions was commercially reasonable precluded summary judgment as to validity of consequential damages exclusion; and (3) genuine issues of material fact as to whether distributor acted as manufacturer's agent precluded summary judgment as to warranty claims	3-23-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Noble County v. Rogers	717 N.E.2d 591 57A03-9903-CV-124	Claim brought against governmental entity under Trial Rules for wrongfully enjoining a party is not barred by immunity provisions of Indiana Tort Claims Act.	3-23-00	
G & N Aircraft, Inc. v. Boehm	703 N.E.2d 665 49A02-9708-CV-323,	(1) evidence was sufficient to support breach of fiduciary duty claim against majority shareholder; (2) order directing corporation and majority shareholder to buy out minority shareholder at full value of his shares did not violate appraisal provision of dissenter's rights statute; (3) evidence supported finding that corporation breached fiduciary duty to minority .	3-23-00	
Latta v. State	722 N.E.2d 389 46A02-9811-PC-478	Dual representation of wife and husband in murder prosecution left wife with ineffective assistance of counsel, when husband invoked privilege to remain silent when questioned about wife's role, his silence was used against the wife, and counsel did not cross-examine him about his silence, and when counsel's final argument asked jury to assume husband's confession was to cover up wife's crime	3-29-00	
Lockett v. State	720 N.E.2d 762 02A03-9905-CR-184	Officer's question whether motorist had any weapons in the car or on his person impermissibly expanded a legitimate traffic stop	3-29-00	
Clear Creek Con-servancy District v. Kirkbride	719 N.E.2d 852 67A05-9904-CV-152	Failure to use statutory opportunities to protest and attend hearing on conservancy district assessments did not preclude Trial Rule 60(B)(1) excusable neglect relief from assessments	4-12-00	
Durham v. U-haul International	722 N.E.2d 355 49A02-9811-CV-940	Punitive damages are available in wrongful death actions	5-04-00	
Fratus v. Marion Community School Board	721 N.E.2d 280 27A02-9901-CV-12	(1) Indiana Education Employment Relations Board (IEERB) did not have jurisdiction over teachers' claim against union for breach of its duty of fair representation, and (2) IEERB did not have jurisdiction over teachers' tort and breach of contract claims against school board	5-04-00	
Bemenderfer v. Williams	720 N.E.2d 400 49A02-9808-CV-663	Wrongful death action continues despite death of surviving dependent beneficiary during pendency of the action.	5-04-00	
Carter v. State	724 N.E.2d 281 02A03-9905-PC-191	Guilty plea was properly accepted despite Defendant's statement he was pleading guilty because he could not prove he was innocent, when statement was made at hearing on acceptance of the plea and plea bargain prior to court's accepting it.	5-24-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
McCarthy v. State	726 N.E.2d 789 37A04-9903-CR-108	Reversible error in teacher's sexual misconduct prosecution to prevent his cross-examination of child's mother about her filing notice of tort claim against school and possible intent to sue defendant personally.	6-08-00	
Zimmerman v. State	727 N.E.2d 714 77A01-9909-CV-318	Cases hold no appeal lies from a prison disciplinary action, but here inmate could bring a civil mandate action to compel DOC to comply with a clear statutory mandate.	8-15-00	
Troxel v. Troxel	720 N.E.2d 731 71A04-9904-CV-162	Requirement that will must be filed for probate within 3 years of death is jurisdictional and may be raised at any time, not just in will contest within 5 months of admission to probate.	8-15-00	
Turner v. City of Evansville	729 N.E.2d 149 82A05-9908-CV-358	Statutory amendments permitting modifications of merit system ordinance after certain date applied retro-actively to city's modifications of its merit system ordinance; police chiefs were "officers" subject to constitutional residency requirement; acts of police chiefs were valid as acts of de facto officers; and agreement between city and union regarding changes to merit system ordinance did not violate nondelegation rule.	8-15-00	
Felsher v. City of Evansville	727 N.E.2d 783 82A04-9910-CV-455	University was entitled to bring claim for invasion of privacy; professor properly enjoined from appropriating "likenesses" of university and officials; professor's actions and behavior did not eliminate need for injunction; and injunction was not overbroad..	8-15-2000	
Dow Chemical v. Ebling	723 N.E.2d 881 22A05-9812-CV-625	State law claims against pesticide manufacturer, with exception of negligent design, were preempted by federal FIFRA pesticide control act; pest control company provided a service and owed duty of care to apartment dwellers, precluding summary judgment.	8-15-00	
Sanchez v. State	732 N.E.2d 165 92A03-9908-CR-322	Instruction that jury could not consider voluntary intoxication evidence did not violate Indiana Constitution	9-05-00	
South Gibson School Board v. Sollman	728 N.E.2d 909 26A01-9906-CV-222	Denying student credit for all course-work he performed in the semester in which he was expelled was arbitrary and capricious; summer school is not included within the period of expulsion which may be imposed for conduct occurring in the first semester	9-14-00	
Johnson v. State	725 N.E.2d 984 71A03-9906-CR-225	Threat element of intimidation crime was not proven by evidence defendant showed his handgun to victim	9-14-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Poynter v. State	733 N.E.2d 500 57A03-9911-CR-423	At both pretrials Court advised nonindigent defendant he needed counsel for trial and defendant indicated he knew he had to retain lawyer but was working and had been tired; 2nd pretrial was continued to give more time to retain counsel; trial proceeded when defendant appeared without counsel; record had no clear advice of waiver or dangers of going pro se - conviction reversed.	10-19-00	
Ellis v. State	734 N.E.2d 311 10A05-9908-PC-343	When judge rejected 1st plea bargain he stated specifically what he would accept; 2nd agreement incorporated what judge had said was acceptable; P-C.R. denial affirmed, on basis plea voluntary despite judge's "involvement" in bargaining; opinion notes current ABA standards permit court to indicate what it will accept and may be used by trial judges for guidance.	10-19-00	
Moberly v. Day	730 N.E.2d 768 07A01-9906-CV-216	Fact issue as to whether son-in-law was employee or independent contractor precluded a summary judgment declaring no liability under respondeat superior theory; and Comparative Fault Act has abrogated fellow servant doctrine.	10-24-00	
Shambaugh and Koorsen v. Carlisle	730 N.E.2d 796 02A03-9908-CV-325	Elevator passenger who was injured when elevator stopped and reversed directions after receiving false fire alarm signal brought negligence action against contractors that installed electrical wiring and fire alarm system in building. Held: contractors did not have control of elevator at time of accident and thus could not be held liable under doctrine of res ipsa loquitur.		
S.T. v. State	733 N.E.2d 937 20A03-9912-JV-480	No ineffective assistance when (1) defense counsel failed to move to exclude two police witnesses due to state's failure to file witness list in compliance with local rule and (2) failed to show cause for defense failure to file its witness list under local rule with result that both defense witnesses were excluded on state's motion	10-24-00	
Tapia v. State	734 N.E.2d 307 45A03-9908-PC-304	Reverses refusal to allow PCR amendment sought 2 weeks prior to hearing or to allow withdrawal of petition without prejudice	11-17-00	
Tincher v. Davidson	731 N.E.2d 485 49A05-9912-CV-534	Affirms mistrial based on jury's failures to make comparative fault damage calculations correctly	11-22-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Burton v. Estate of Davis	730 N.E.2d 800 39A05-9910-CV-468	Wrongful death and survival statutes allow estate of deceased motorist to bring claim against other motorist and employer for tort of intentional interference with civil litigation by spoliation of evidence from the automobile accident	11-22-00	
Brown v. Branch	733 N.E.2d 17 07A04-9907-CV-339	Oral promise to give house to girlfriend if she moved back not within the statute of frauds.	11-22-00	
New Castle Lodge v. St. Board of Tx. Comm.	733 N.E.2d 36 49T10-9701-TA-113	Fraternal organization which owned lodge building was entitled to partial property tax exemption	11-22-00	
Gallant Ins. Co. v. Isaac	732 N.E.2d 1262 49A02-0001-CV-56	Insurer 's agent had "inherent authority" to bind insurer, applying case holding corp. president had inherent authority to bind corp. to contract	11-22-00	
Reeder v. State	732 N.E.2d 1246 49A05-9909-CV-416	When filed, expert's affidavit sufficed to avoid summary judgment but affiant's death after the filing made his affidavit inadmissible and hence summary judgment properly granted.	1-11-01	
Holley v. Childress	732 N.E.2d 1246 67A05-9905-JV-321	Facts did not suffice to overcome presumption non-custodial parent was fit so that temporary guardianship for deceased custodial parent's new spouse was error.	1-11-01	
Cannon v. Cannon	729 N.E.2d 1043 49A05-9908-CV-366	Affirms decision to deny maintenance for spouse with ailments but who generated income with garage sales	1-11-01	
City of New Haven v. Reichhart and Chemical Waste Mgmt. of IN	729 N.E.2d 600 99A02-9904-CV-247	Challenge to annexation financed by defendant's employer was exercise of First Amendment petition right and 12(B)(6) dismissal of city's malicious prosecution claim was properly granted.	1-11-01	
Davidson v. State	735 N.E.2d 325 22A01-0004-PC-116	Ineffective assistance for counsel not to have demanded mandatory severance of charges of "same or similar character" when failure to do so resulted in court's having discretion to order consecutive sentences.	1-17-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Griffin v. State	735 N.E.2d 258 49A02-9909-CR-647	Three opinion resolution on admissibility under Ev. Rule 606 of juror affidavits on participation of alternate in deliberations - op. 1 affidavits inadmissible; op 2 affidavits admissible but no prejudice shown, op 3 affidavits admissible and prejudice	1-17-01	
Leshore v. State	739 N.E.2d 1075 02A03-0007-CR-234	(1) Writ of body attachment on which police detained defendant was invalid on its face for failure to include bail or escrow amount, and (2) defendant's flight from detention under the writ did not amount to escape.	1-29-01	
Rogers v. R.J. Reynolds Tobacco	731 N.E.2d 6 49A02-9808-CV-668	(1) trial court committed reversible error by making ex parte communication with deliberating jury, in which jury was advised that it could hold a press conference after its verdict was read, without giving notice to parties; (2) denial of plaintiff's motion for relief from judgment, which was based on public statements by director of one of manufacturers, was within court's discretion; (3) jury was properly instructed on doctrine of incurred risk; (4) evidentiary rulings were within court's discretion; and (5) leave to amend complaint was properly denied	2-09-01	
Mercantile Nat'l Bank v. First Builders	732 N.E.2d 1287 45A03-9904-CV-132	materialman's notice to owner of intent to hold personally liable for material furnished contractor, IC 32-8-3-9, sufficed even though it was filed after summary judgment had been requested but not yet entered on initial complaint for mechanic's lien foreclosure	2-09-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
State Farm Fire & Casualty v. T.B.	728 N.E.2d 919 53A01-9908-CV-266	(1) insurer acted at its own peril in electing not to defend under reservation of rights or seek declaratory judgment that it had no duty to defend; (2) insurer was collaterally estopped from asserting defense of childcare exclusion that was addressed in consent judgment; (3) exception to child care exclusion applied in any event; and (4) insurer's liability was limited to $300,000 plus postjudgment interest on entire amount of judgment until payment of its limits.	2-09-01	
Merritt v. Evansville Vanderburgh School Corp	735 N.E.2d 269 82A01-912-CV-421	error to refuse to excuse for cause two venirepersons employed by defendant even though they asserted they could nonetheless be impartial and attentive	2-09-01	
IDEM v. RLG, Inc	735 N.E.2d 290 27A02-9909-CV-646	the weight of authority requires some evidence of knowledge, action, or inaction by a corporate officer before personal liability for public health law violations may be imposed. Personal liability may not be imposed based solely upon a corporate officer's title.	2-09-01	
State v. Gerschoffer	738 N.E.2d 713 72A05-0003-CR0116	Sobriety checkpoint searches are prohibited by Indiana Constitution.	2-14-01	
Healthscript, Inc. v. State	724 N.E.2d 265, *rhrg.* 740 N.E.2d 562 49A05-9908-CR-370	Medicare fraud crimes do not include violations of state administrative regulations.	2-14-01	